

**EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.**

ATTORNEYS AT LAW  
900 COMERICA BUILDING  
KALAMAZOO, MICHIGAN 49007-4752  
TELEPHONE (269) 381-8844  
FACSIMILE (269) 381-8822

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T.R.A. DOCKET ROOM

GEORGE H. LENNON  
DAVID G. CROCKER  
MICHAEL D. O'CONNOR  
HAROLD E. FISCHER, JR.  
LAWRENCE M. BRENTON  
GORDON C. MILLER  
GARY P. BARTOSIEWICZ  
BLAKE D. CROCKER

ROBERT M. TAYLOR  
RON W. KIMBREL  
PATRICK D. CROCKER  
ANDREW J. VORBRICH  
TYREN R. CUDNEY  
STEVEN M. BROWN  
KRISTEN L. GETTING

OF COUNSEL

THOMPSON BENNETT  
JOHN T. PETERS, JR.

VINCENT T. EARLY  
(1922 - 2001)  
JOSEPH J. BURGIE  
(1926 - 1992)

September 25, 2003

Sharla Dillon, Docket Manager  
Telecommunications Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

RE: *Application of NOW Acquisition Corporation for a CCN to Provide  
Competing Local Telecommunication and Interexchange  
Services*

Docket No. 03-00455

Dear Ms. Dillon:

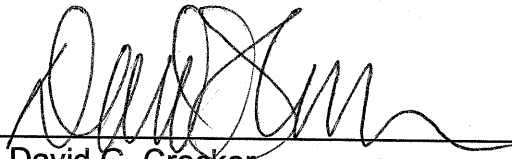
Enclosed are the original and thirteen (13) copies of Now Acquisition Corporation's Motion to Dismiss Petition of BellSouth Telecommunications, Inc. for Leave to Intervene.

Should you have any questions, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

By

  
David G. Crocker

DGC/tlb

enc

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re:        *Application of NOW Acquisition Corporation for a CCN to Provide  
Competing Local Telecommunication and Interexchange Services*

Docket No. 03-00455

MOTION TO DISMISS PETITION OF BELL SOUTH  
TELECOMMUNICATIONS, INC. FOR LEAVE TO INTERVENE

Now Acquisition Corporation ("NAC") moves to dismiss the Petition for Leave to Intervene ("Petition") filed by BellSouth Telecommunications, Inc., ("BellSouth"), for the following reasons:

1.        The statutes and Authority Rules relied upon by BellSouth to intervene in this proceeding require that BellSouth set forth with particularity those facts which demonstrate that BellSouth's legal interests may be determined in this proceeding.
2.        The only facts set forth by BellSouth to demonstrate that its legal interests may be determined in this proceeding are contained in paragraphs 4, 5, 6, 7 and 8 of the Petition.
3.        The facts as set forth in paragraphs 4, 5, 6, 7 and 8 of the Petition relate to matters which are outside the jurisdiction of the Authority and which are being litigated in the U.S. Bankruptcy Court for the Southern District of Mississippi except for the allegation in paragraph 6 that NAC does not have an interconnection agreement with BellSouth. The interconnection agreement issue may come before the Authority in another proceeding since BellSouth on July 16, 2003, illegally refused to allow NAC to adopt the AT&T Communications of the Southern States, LLC, interconnection agreement with BellSouth as required by 47 USC 252. Interjection of the other facts alleged in paragraphs 4, 5, 6, 7 and 8 of the Petition into this docket is nothing more

than a blatant attempt by BellSouth to find an alternative forum to review BellSouth's unsecured claim, which is an issue for the Bankruptcy Court alone. BellSouth should not be allowed to use the regulatory process in such a manner so as to thwart both competitors and the bankruptcy code.

4. Since the Authority does not have jurisdiction to determine any of the legal issues raised by the facts set forth in paragraphs 4, 5, 6, 7 and 8 of the Petition, except for the anticompetitive act of BellSouth in illegally refusing the NAC request, the Petition does not comply with the statutory and regulatory requirements so as to allow BellSouth to intervene in this proceeding.

5. This proceeding is simply to determine whether or not NAC meets the requirements of the State of Tennessee to receive a CCN to provide competing local telecommunications and interexchange services, a matter in which the Authority is competent to make a determination without the participation of BellSouth or any other carrier. NAC is neither an affiliate of NOW Communications, Inc. ("NOW"), nor relying upon NOW for purposes of receiving the CCN requested in its application. Rather, NAC seeks a CCN based upon the qualifications outlined in its application. Circumstances concerning NOW's bankruptcy proceeding are irrelevant to the Authority's determination of whether or not those qualifications meet the state's requirements for entry. The issues raised by BellSouth, by the terms of its own pleadings, are in the sole and exclusive jurisdiction of the U.S. Bankruptcy Court for the Southern District of Mississippi and will not be determined by the Authority in this proceeding.

NAC therefore requests that the Authority dismiss the Petition or require that BellSouth supplement the Petition and set forth with particularity the facts which demonstrate that the legal interests of BellSouth may be determined in this proceeding

which is limited to the determination of whether NAC will receive a CCN to provide competing local telecommunication and interexchange services in Tennessee.

Dated: September 25, 2003

Respectfully submitted,

Now Acquisition Corporation

Early, Lennon, Crocker & Bartosiewicz, P.L.C.

By: 

David G. Crocker

Its Attorney

900 Comerica Building

Kalamazoo, MI 49007

Tel: (269) 381-8844

**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300

Joelle Phillips  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300

Laesa Bitterling